

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
April 14, 2003

**D041064        In re Makenna T. et al., Juveniles**

The orders are affirmed. Kremer, P.J.; We Concur: McDonald, J., McIntyre, J.,

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

Clerk: D. E. Moore

**D039275        Southern California Underground Contractors, Inc. v. City of San Diego**

Cause called on merits. Greg Zimmerman, Esq. argued for respondent/cross-appellant, Southern California Underground Contractors, Inc. Sim Von Kalinowski, Deputy City Attorney argued for respondent/cross-appellant, The City. Mr. Zimmerman replied. Mr. Kalinowski replied. Cause submitted.

**D038970        McGaw et al. v. County of Imperial et al.**

Cause called on merits. Alan L. Geraci, Esq. argued for appellant. Charles A. Viviano, Esq. argued for respondent, County of Imperial. Deborah K. Garvin, Esq. argued for respondent, City of Imperial. Vance Taylor, Esq. argued for respondent, Imperial Irrigation District. Mr. Geraci replied. Cause submitted.

Court recessed at 10:19 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller

Clerk: D. E. Moore

**D039332        People v. Englebrecht**

Cause called on merits. Candace M. Carroll, Esq. argued for appellant. C. Ellen Pilsecker, Deputy County Counsel argued for respondent. Ms. Carroll replied. Cause submitted.

Court recessed at 2:09 p.m. to change panel members. New panel members: The Honorable Daniel Kremer Presiding Justice, and The Honorable Associate Justices Judith Haller and Judith McConnell

**D038323)        Encinitas Country Day School, Inc., et al. v. California Coastal Commission/San Elijo Lagoon Conservancy**

**D040300)        Encinitas Country Day School, et al. v. California Coastal Commission/San Elijo Lagoon Conservancy**

Cause called on merits. **D038323~** G. R. Overton, Deputy Attorney General argued for respondent/cross-appellant, California Coastal Commission. Kevin K. Johnson, Esq. argued for r.p.i.-appellant/cross-respondent, San Elijo Lagoon Conservancy. Martin J. Mullen, Esq. argued for respondent/cross-appellant, Encinitas Country Day School, Inc. Mr. Overton replied. Mr. Johnson replied. Mr. Mullen replied. Cause submitted. **D040300 ~** Jared Hanson, Esq. argued for r.p.i.-appellant, San Elijo Lagoon Conservancy. Martin J. Mullen, Esq. argued for respondent, Encinitas Country Day School. Mr. Hanson replied. Cause submitted.

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Court recessed at 3:36 p.m. until Tuesday, April 15, 2003 at 9:00 a.m.

**D041940 Pleasant v. Superior Court of San Diego County/ People**  
The petition is denied.

**D039484 Leap Wireless International, Inc., et al., v. Endesa, S.A.**  
The judgment is affirmed. Endesa is to recover its costs on appeal. McIntyre, J., We Concur: Huffman, Acting P.J., Nares, J.

**D041886 People v. Schwartz**  
The letter received from defendant on April 1, 2003, is deemed a petition to transfer under California Rules of Court, rule 64(a). The petition is denied as untimely.

**D040151 Fritz v. Metabolife International, Inc.**  
Upon written stipulation filed by the parties to the appeal, the appeal is dismissed.

**D039817 Bayard v. Fort et al.**  
The judgment is affirmed. The defendants are awarded costs on appeal. McConnell, J.; We Concur: Huffman, Acting P.J., Nares, J.

**D039238 California Chiropractic Association v. American Specialty Health Plans, Inc., et al.**  
The order is reversed insofar as it denies arbitration of the individual restitution claims of the Participating Providers; the order is affirmed in all other respects. The parties are to bear their own costs on appeal. McConnell, J.; We Concur: Benke, Acting P.J., Haller, J.

**D041463 Amy T. v. Superior Court of San Diego County/San Diego Health and Human Service Agency**  
The petition is denied.

**D039205 People v. Smith**  
**D039206**

(Consolidated) This matter is remanded for the trial court to either stay or impose sentence on the prison prior. As to Case No. SCD158532, the abstract of judgment must be corrected to indicate the Health and Safety Code section 11370.2 enhancement was stricken as to count 2A. After these proceedings, the trial court is directed to prepare an amended abstract of judgment and to forward a copy of the amended abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed. McIntyre, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

**D041781 Jennifer W., et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**  
The attorney for petitioner Jennifer W. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case as to Jennifer W. is dismissed.

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**D041947        Cantrell v. Sylvest et al./Burger**

The appeal is dismissed.

**D041779        Pickwell et al. v. Cruz et al.**

Pursuant to California Rules of Court, rule 8, the appeal filed March 10, 2003, is dismissed for appellant's failure to timely designate the record.

**D041770        Kreca v. California Western School of Law**

Pursuant to California Rules of Court, rule 8, the appeal filed March 4, 2003, is dismissed for appellant's failure to timely designate the record.

**D039079        People v. Winter**

**D040352        Winter on Habeas Corpus**

(consolidated) The judgment is affirmed, the petition for habeas corpus is denied.

McIntyre, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices

Patricia Benke and James McIntyre

Clerk: D. E. Moore

**D040221        In re Pablo M., a Juvenile**

Cause called on merits. Glen Niemy, Esq. argued for appellant. Ray DiGuseppe, Certified Law Student argued for respondent. Mr. Niemy replied.

**D039586        People v. Esquera**

Cause called on merits. Jeffrey A. Needelman, Esq. argued for appellant. Douglas Lee, Deputy Attorney General argued for respondent. Mr. Needelman replied. Cause submitted.

Court recessed at 9:42 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald

**D040023        Conte v. Girard Orthopaedic Surgeons & Medical Group, Inc., et al.**

Cause called on merits. Stephen G. Root, Esq. argued for appellant. Clark R. Hudson, Esq. argued for respondent. Mr. Root replied. Cause submitted.

Court recessed at 10:20 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

Clerk: D. E. Moore

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**D039401          Hubbard v. Bruns**

Cause called on merits. James R. Miller, Esq. argued for appellant. Gabriele Prater, Esq. argued for respondent. Mr. Miller replied. Cause submitted.

**D038997          Feurzeig v. Insurance Company of the West**

Cause called on merits. Julie L. Woods, Esq. argued for appellant. C. Darryl Cordero, Esq. argued for respondent. Ms. Woods replied. Cause submitted.

Court recessed at 2:15 p.m. until Wednesday, April 16, 2003 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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**D038395        People v. McCormick**

**D039012**

(Consolidated) The judgment in appeal No. D038395 is affirmed. The appeal from the September 21, 2001 order in appeal No. D039012 is dismissed. Aaron, J.; We Concur: Kremer, P.J., Benke, J.

**D040429        People v. Bready**

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

**D039279        People v. Gilmore**

The judgment is affirmed. Kremer, P.J.; We Concur: Benke, J., Haller, J.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

Clerk: D. E. Moore

**D038741        In re Bailey B., a Juvenile**

Cause called on merits. Edward A. Hoffman, Esq. argued for appellant. Jonathan Lynn, Deputy Attorney General argued for respondent. Mr. Hoffman replied. Cause submitted.

**D038861        People v. Redondo**

Cause called on merits. Carl Fabian, Esq. argued for appellant. Warren Robinson, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted.

**D039489        Navarette v. Holland**

Cause called on merits. Lisa Ann Cervantes, Esq. argued for appellant. Dan Lawton, Esq. argued for respondent. Ms. Cervantes replied. Cause submitted.

Court recessed at 10:02 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

**D040359        In re Taylor K., a Juvenile**

Cause called on merits. Mary Woodward Wells, Esq. argued for appellant. Kara Minnihan, Certified Law Student argued for respondent. Ms. Wells replied. Cause submitted.

Court recessed at 10:27 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

Clerk: D. E. Moore

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**D040606       Russel v. Hirota**

Cause called on merits. Thomas Russel, argued telephonically for appellant in pro per. No appearance by respondent's counsel. Cause submitted.

Court recessed at 1:35 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

**D038407       Bryan v. San Diego Unified School District**

Cause called on merits. Megan Richmond, Esq. argued for appellant. John Morris, Esq. argued for respondent. Ms. Richmond replied. Cause submitted.

Court recessed at 2:05 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

**D036897       People v. Hopper**

Cause called on merits. Daniel G. Koryn, Esq. was present in oral argument for appellant and submitted on the briefs. Maxine P. Cutler, Deputy Attorney General was present in oral argument for respondent and submitted on the briefs. Cause submitted.

Court recessed at 2:14 p.m. until Thursday, April 17, 2003 at 9:00 a.m.

**D040260       In re Brandon A., a Juvenile**

The judgment is affirmed. Benke, J.; We Concur: Kremer, P.J., McIntyre, J.

**D040810       In re Amber K., a Juvenile**

The judgment terminating Samuel's parental rights is reversed and the matter is remanded to the juvenile court for a new section 366.26 hearing. McConnell, J.; We Concur: Kremer, P.J., Huffman, J.

**D041624       Rand v. Superior Court of San Diego County/The Division of Medical Quality,  
Medical Board of California, Department of Consumer Affairs**

On February 19, 2003, the court temporarily stayed the Decision After Nonadoption suspending Dr. Rand's medical license. At the time the stay was issued, this court was advised the superior court could be hearing Dr. Rand's petition for writ of mandate within the next week. This court was later informed that the matter had been continued to March 20 and more recently to sometime in mid-May.

This court is requesting a written report from the parties on or before April 22, 2003 describing the progress of the case, explaining the bases for the continuances and indicating whether the lower court has had an opportunity to review the administrative record in its entirety or made any rulings (telephonic or otherwise) since the time the stay was issued.

**D038224       People v. Urquidez**

The judgment is affirmed. McDonald, J.; We Concur: Kremer, P.J., McIntyre, J.

**D041052       In re Percilla E., a Juvenile**

The judgment is affirmed. Nares, J.; We Concur: Kremer, P.J., Benke, J.

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**D041898        Haack v. Superior Court of San Diego County/Haack**

At the request of petitioner, the petition for writ of mandate is dismissed.

**D039389        People v. Villa**

The judgment is affirmed. McDonald, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

**D040548        Naghavian v. D'Jamali**

The appeal is dismissed.

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**D039715        People v. Mata**

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

**D037713        People v. Cummings et al.**

The judgments are affirmed. Nares, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald  
Clerk: D. E. Moore

**D038343        Benson v. Killingsworth**

Cause called on merits. Janice R. Mazur, Esq. argued for appellant/cross-respondent, Killingsworth. Donald R. Warren, Esq. argued for respondent/cross-appellant, Benson. Cathleen G. Fitch, Esq. argued for respondent, Brack. Ms. Mazur replied. Cause submitted.

Court recessed at 10:01 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith McConnell

**D039956        LeBeau et al. v. Roxane Laboratories, Inc., et al.**

Cause called on merits. Charles P. LeBeau, Esq. argued for appellant. John Morris, Esq. argued for respondent, Scripps Memorial Hospital. Caroline Chan, Esq. argued for respondent, Danbury Pharmaceutical, Inc. Edward Patrick Swan, Jr., Esq. argued for respondent, Roxane Laboratories, Inc. Gerald P. Schneeweis, Esq. argued for respondent, Pharmacia & Upjohn Company. Alan Lazarus, Esq. argued for respondent, Merck & Co., Inc. Linda Jean Sinclair, Esq. argued for respondent, Geneva Pharmaceuticals. Ms. LeBeau replied. Cause submitted.

Court recessed at 11:10 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke  
Clerk: D. E. Moore

**D041072        Copley Press, Inc., et al. v. Superior Court**

Matter called on merits. Guylyn R. Cummins, Esq. argued for petitioner. Laura Shaffer, Esq. argued for real party in interest, Westerfield. Richard S. Armstrong, Deputy District Attorney argued for the People. Ms. Cummins replied. Matter submitted.

Court recessed at 2:15 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell



COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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**D039927) In re Valarie B., a Juvenile**

**D040014) In re Valarie B., a Juvenile**

Cause called on merits. Howard C. Cohen, Esq. argued for appellant. Robin Derman, Certified Law Student argued for respondent. Mr. Cohen replied. Cause submitted.

Court recessed at 2:39 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Judith McConnell

**D039890 Residential Capital LLC v. Premier Trust Deed Services, Inc.**

**D039894 Residential Capital LLC v. Cal-Western Reconveyance Corp.**

Cause called on merits. Mark A. Maasch, Esq. argued for appellant. Michael Robert Brooks, Esq. argued for respondent (D039890) Premier Trust Deed Services, Inc. Peter J. Salmon, Esq. argued for respondent (D039894) Cal-Western Reconveyance Corporation. Mr. Maasch replied. Cause submitted as to both cases.

Court recessed at 4 p.m. until Friday, April 18, 2003 at 9 a.m.

**D040044 People v. Sciascia**

The judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

**D041556 In re Cache L., a Juvenile**

The appeal is dismissed. Huffman, Acting P.J.; We Concur: Nares, J., McConnell, J.

**D041646 In re Aquilino V. et al., Juveniles**

The appeal is dismissed. Huffman, Acting P.J.; We Concur: Nares, J., McConnell, J.

**D041586 In re Jesus M. et al., Juveniles**

The appeal is dismissed. Huffman, Acting P.J.; We Concur: Nares, J., McConnell, J.

**D039236 People v. Allman**

The petition for rehearing is denied.

**D041496 Daimlerchrysler Corporation v. Superior Court of San Diego County/Angelino et al.**

The petition is denied.

**D040714 Jacob v. Brawley Union High School District**

The judgment is affirmed. McDonald, J.; We Concur: Kremer P.J., Benke, J.

**D039321 People v. Cohn**

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D041631 In re Randy W., a Juvenile**

The appeal is dismissed. Huffman, Acting P.J.; We Concur: Nares, J., McConnell, J.

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**D040221        In re Pablo M., a Juvenile**

The matter is remanded to the juvenile court so that, in accord with Welfare and Institutions Code section 702, it may declare the character of Pablo's methamphetamine possession offense. In all other respects, the judgment is affirmed. Kremer, P.J.; We Concur: Benke, J., McIntyre, J.

**D039371        WHGF Real Estate Ltd. Partnership v. First San Diego Properties XX et al.**

The orders are affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McIntyre, J.

**D041542        In re Self on Habeas Corpus**

The petition is denied.

**D041928        Kassab v. Superior Court of San Diego County/People**

The petition is denied.

**D037637        WHGF Real Estate LTD Partnership v. First San Diego Properties XX et al.**

The judgment of dismissal is affirmed. Each party to bear their own costs on appeal. Huffman, Acting P.J.; We Concur: Nares, J., McIntyre, J.

**D041489        Daimlerchrysler Corporation v. Superior Court of San Diego County/Angelino et al.**

The petition is denied.

**D041839        Debra M. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

Let a writ of issue directing the superior court to conduct a permanency hearing as to guardianship or long-term foster care. Debra's request for a stay of trial pending this writ proceeding is denied as moot. This opinion is made final immediately as to this court. (Cal. Rules of Court, rule 24(b)(3).) O'Rourke, J.; We Concur: Huffman, Acting P.J.

**D039240        Norman v. Life Centers of America Inc., et al.**

The opinion filed March 26, 2003, is ordered certified for publication.

**D041781        Jennifer W. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Charles W. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D039059        Iliff v. Dustrud**

The order is reversed and the matter remanded with directions that the trial court reinstate and issue notices of renewal of the May 29, 1991 amended judgment. Iliff shall recover his costs on appeal. CERTIFIED FOR PUBLICATION. O'Rourke, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

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**D040569        Scripps Clinic v. Superior Court of San Diego County/Patricia Thompson and George Thompson**

Let a writ of mandate issue directing the Superior Court of San Diego County to vacate the portion of its order of July 9, 2002, denying summary adjudication of punitive damages and of the Unruh Act, the Cartwright Act, the unfair competition and the breach of public policy causes of action and to enter an order granting summary adjudication of punitive damages and the Unruh Act, the Cartwright Act, the unfair competition and the breach of public policy causes of action. The stay issued by this court on August 21, 2002 is vacated. Each party is to bear its own costs on the order to show cause. O'Rourke, J.; We Concur: Huffman, Acting P.J., McDonald, J.

**D041320        Uber v. Hoffman**

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately.

**D041387        People v. Brown**

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

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**D040023        Conte v. Girard Orthopaedic Surgeons Medical Group, Inc., et al.**

Affirmed. Respondent's to recover costs on appeal. CERTIFIED FOR PUBLICATION.  
Kremer, P.J.; We Concur: Benke, J., McDonald, J.

**D039809        People v. Irvin**

The judgment is affirmed. McConnell, J.; We Concur: Nares, Acting P.J., Haller, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller  
Clerk: D. E. Moore

**D039008        Galanek v. Wismar et al.**

Cause called on merits. Jennifer Hegemier, Esq. argued for appellant. Alan E. Greenberg, Esq. argued for respondent. Ms. Hegemier replied. Cause submitted.

**D039479        Garrison v. Hodge et al.**

Cause called on merits. Lawrence T. Dougherty, Esq. argued for appellant. Bernard M. Hansen, Esq. argued for respondent. Mr. Dougherty replied. Cause submitted.

Court recessed at 10:58 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith McConnell  
Clerk: D. E. Moore

**D039241        American Home Shield Corporation et al. v. Fidelity National Home Warranty Co.**

Cause called on merits. Michael B. Margolis, Esq. argued for appellant/cros-respondent. Susan Williams, Esq. argued for respondent/cross-appellant. Mr. Margolis replied. Cause submitted.

Court recessed at 2:02 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

**D038241        East County Physicians Medical Group, Inc. v. Aetna Life and Casualty Company**

Cause called on merits. Joel R. Bennett, Esq. argued for appellant. Marcelle E. Mihaila, Esq. argued for respondent. Maria R. Acker, Esq. was present in oral argument for respondent, but did not argue. Mr. Bennett replied. Cause submitted.

Court recessed at 2:42 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke

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**D039112        City of Carlsbad v. Rudvalis et al.**

Cause called on merits. Norman E. Matteoni, Esq. argued for appellant. Peggy O'Laughlin, Esq. was present in oral argument for appellant but did not argue. Richard R. Freeland, Esq. was present in oral argument for appellant, but did not argue. Ronald Martin Cole, Esq. argued for respondent. Mr. Matteoni replied. Cause submitted.

Court adjourned at 3:45 p.m.

**D041069        In re Heather H., a Juvenile**

The judgment is affirmed. McDonald, J.; We Concur: Kremer, P.J., McIntyre, J.

**D041053        In re Anayeli H., a Juvenile**

The visitation order is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.